

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 5
JUDGE CHRISTOPHER B. LATHAM, PRESIDING
MONDAY, OCTOBER 20, 2014

10:00 AM

1 - 12-14442-CL Ch 13 JEFFREY TYLER RALSTON

HEARING RE SUBSTITUTION OF ATTORNEY FILED BY DEBTOR

ATTORNEY: MICHAEL G. DOAN (JEFFREY TYLER RALSTON)

2 - 12-15816-CL Ch 7 JACOB BENFORD CARROLL

ADV: 13-90055 JOHNNIE W MCLAURIN v. JACOB BENFORD CARROLL

TELE

STATUS CONFERENCE (RE COMPLAINT) (fr. 9/8/14)

ATTORNEY: ALEX P. AGHAJANIAN (JOHNNIE W MCLAURIN)

ATTORNEY: DENNIS J. WICKHAM (JACOB BENFORD CARROLL)

3 - 13-00646-CL Ch 7 PAUL E. & JENEE Y EITNER

- 1) FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF
EXPENSES FOR R. DEAN JOHNSON CPA, ACCOUNTANT FOR TRUSTEE

Tentative Ruling: The court has reviewed R. Dean Johnson's final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$1,712.00 in fees and \$113.74 in costs. The court excuses appearances at the October 20, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 2) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT
OF EXPENSES FOR SOLOMON WARD SEIDENWURM & SMITH LLP,
ATTORNEYS FOR TRUSTEE

Tentative Ruling: The court has reviewed Solomon Ward Seidenwurm & Smith, LLP's final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$4,414.00 in fees, \$4.00 in costs, and up to \$500.00 in additional fees and costs reasonably incurred for post-application services. The court excuses appearances at the October 20, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

ATTORNEY: MICHAEL D. BRESLAUER (CHRISTOPHER R. BARCLAY)

ATTORNEY: JONATHAN N. VAKNIN (JENEE Y EITNER, PAUL E. EITNER)

4 - 13-02906-CL Ch 13 JAVIER L. & CARLA INIGUEZ

MOTION FOR RELIEF FROM STAY, RS #CJH-001 FILED BY CARRINGTON
MORTGAGE SERVICES LLC

Court Deputy Note: Off calendar. Court Modified Order on Stipulation re Adequate Protection entered 10/16/14 (re ECF No. 40).

ATTORNEY: THOMAS K. SHANNER (CARLA INIGUEZ, JAVIER L. INIGUEZ)

ATTORNEY: CHRISTOPHER HOO (CARRINGTON MORTGAGE SERVICES LLC)

10:00 AM

5 - 13-05529-CL Ch 13 JAMES BRIAN MULVIHILL & LORENA G SALGADO-MULVIHILL

MOTION FOR RELIEF FROM STAY, RS #RCO-1 FILED BY THE BANK OF
NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF THE CWABS INC, ASSET-BACKED
CERTIFICATES, SERIES 2005-6

ATTORNEY: BRIAN CROZIER WHITAKER (JAMES BRIAN MULVIHILL, LORENA G
SALGADO-MULVIHILL)

ATTORNEY: ERICA LOFTIS (THE BANK OF NEW YORK MELLON)

6 - 13-10330-CL Ch 7 ANNETTE SWANTON

- 1) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT
OF EXPENSES FOR CHRISTOPHER R. BARCLAY, CHAPTER 7 TRUSTEE

Tentative Ruling: The court has reviewed Trustee Christopher R. Barclay's final application for compensation. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$2,750.00 in fees and \$81.96 in costs. The court excuses appearances at the October 20, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 2) FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF
EXPENSES FOR R. DEAN JOHNSON CPA, ACCOUNTANT FOR TRUSTEE

Tentative Ruling: The court has reviewed R. Dean Johnson's final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$749.00 in fees and \$113.78 in costs. The court excuses appearances at the October 20, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 3) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT
OF EXPENSES FOR SOLOMON WARD SEIDENWURM & SMITH LLP,
ATTORNEYS FOR TRUSTEE

Tentative Ruling: The court has reviewed Solomon Ward Seidenwurm & Smith, LLP's final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$3,416.50 in fees, \$0.70 in costs, and up to \$500.00 in additional fees and costs reasonably incurred for post-application services. The court excuses appearances at the October 20, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

ATTORNEY: MICHAEL D. BRESLAUER (CHRISTOPHER R. BARCLAY)

ATTORNEY: MICHAEL G. DOAN (ANNETTE SWANTON)

7 - 13-10454-CL Ch 7 FRANCISCO J. & LORENA ACEVEDO

ADV: 14-90011 TRUCK.NET, LLC v. FRANCISCO J. ACEVEDO

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: BRADLEY L. JACOBS (TRUCK.NET, LLC)

ATTORNEY: DAVID L. SPECKMAN (FRANCISCO J. ACEVEDO)

10:00 AM

8 - 14-00170-CL Ch 7 STEPHEN S. PROPHET

ADV: 14-90049 TORREY PINES BANK v. STEPHEN S. PROPHET

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: PETER L. DUNCAN (TORREY PINES BANK)

ATTORNEY: LYNN BEEKMAN (TORREY PINES BANK)

ATTORNEY: DAVID MARSHALL (STEPHEN S. PROPHET)

ATTORNEY: JON F. GAUTHIER (STEPHEN S. PROPHET)

9 - 14-03790-CL Ch 7 MARLA GAY FERGUSON

MOTION FOR DAMAGES FOR VIOLATION OF AUTOMATIC STAY FILED BY DEBTOR

Tentative Ruling: The court has reviewed Debtor's motion for damages for violation of the automatic stay, the creditor's opposition, and Debtor's reply. Good cause appearing, the court partially **grants** Debtor's motion and awards her \$10,894.42.

Background

Debtor owned a mobilehome located in Lakeside View Estates. Prepetition, Creditor Lakeside View Estates ("Lakeside") filed an unlawful detainer action against Debtor. Debtor and Lakeside settled the action, but Debtor violated the settlement agreement. Lakeside then obtained a judgment for possession from the Superior Court. Debtor filed a voluntary Chapter 7 petition on May 14, 2014 (ECF No. 1), the day before the scheduled eviction.

Debtor claimed the subject mobilehome as exempt on schedule C (ECF No. 11). In addition, the trustee abandoned the mobilehome to Debtor on June 13, 2014 (ECF Nos. 26, 27, 28).

Lakeside sought stay relief to "permit[] Movant to commence and/or continue and consummate its unlawful detainer proceedings in State Court without further restraint from the Bankruptcy Court." (ECF No. 18.) Debtor opposed the motion (ECF No. 21). After a hearing, the court granted Lakeside's motion from the bench (ECF No. 29). Lakeside submitted a defective order, which the court rejected. Lakeside never submitted a follow-up order thereafter.

Meanwhile, Debtor found a purchaser for the mobilehome and opened escrow. Lakeside sent a letter to the escrow company demanding \$12,742.81, comprised of: \$10,894.42 for prepetition rent; and \$1,848.39 for postpetition rent. The sale closed on July 22, 2014, and the escrow company sent Lakeside the requested funds.

Debtor received her discharge on August 12, 2014 (ECF No. 39). She then brought this motion for damages for violation of the automatic stay (ECF Nos. 43, 44, 45, and 47). Lakeside opposed (ECF No. 49), and Debtor replied (ECF No. 53).

Discussion

Debtor seeks to recover from Lakeside the \$12,742.81 that the escrow company distributed to it. In her reply, Debtor clarifies: "The basis [of] the Motion is not regarding actions Lakeside View took with regards to the [mobilehome] space, but is that Lakeside View enforced its claim against Debtor by demanding payment of its unsecured claim from the proceeds of Debtor's exempt property, her mobile home." (ECF No. 53, pg. 2.)

Lakeside does not dispute that it demanded and collected the rents. Instead, it claims it had a right to collect the pre- and post-petition rents under Cal. Civ. Code. 798.55(a) and the post-petition rents under an implied adequate protection order.

Legal Standard

Section 362(a)(6) stays "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(6). The Code defines "claim" as a

right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . .

11 U.S.C. § 101(5)(A). The Code uses the "'broadest possible definition' of claim to ensure that 'all legal obligations of the debtor, *no matter how remote or contingent*, will be dealt with in the bankruptcy case." *In re SNTL Corp.*, 571 F.3d 826, 838 (9th Cir. 2009) (citing *Cal. Dep't of Health Servs. v. Jensen (In re Jensen)*, 995 F.2d 925, 929-30 (9th Cir. 1993)).

Section 362(k)(1) authorizes a debtor to recover damages for willful violations of the automatic stay. 11 U.S.C. § 362(k). "To 'willfully' violate the automatic stay, the alleged violator must have knowledge of the automatic stay and have intentionally violated the stay." *In re Perl*, 513 B.R. 566, 576 (B.A.P. 9th Cir. 2014). The creditor need only receive informal notice. *Id.* "Knowledge of the bankruptcy filing is [the] legal equivalent of knowledge of the automatic stay." *Id.* (internal quotation marks omitted). Specific intent is not required. *Morris v. Peralta (In re Peralta)*, 317 B.R. 381, 389 (B.A.P. 9th Cir. 2004). So whether the creditor "believed in good faith that it had a right to [the property] is irrelevant to the analysis of whether its act was intentional." *Perl*, 513 B.R. at 576.

An individual injured by a willful stay violation may recover actual damages, including for emotional distress, and attorneys' fees incurred to prevent the violation. 11 U.S.C. § 362(k)(1); *Sternberg v. Johnston*, 595 F.3d 937, 949 (9th Cir. 2010). If the court finds that a willful stay violation occurred, an award under § 362(k) "is mandatory." See *Calif. Employment Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1153 (9th Cir. 1996). An individual may recover attorneys' fees incurred to correct the stay violation under § 362(k), but not for an action pursuing damages. See *Sternberg*, 595 F.3d at 948. "The stay is a shield, not a sword." *Id.*

In California, mobilehome tenancies "are governed by the Mobilehome Residency Law. The law extensively regulates the landlord-tenant relationship between mobilehome park owners and residents." *SC Manufactured Homes, Inc. v. Canyon View Estates, Inc.*, 148 Cal. App. 4th 663, 673 (2007) (citations and internal quotation marks omitted). The California Legislature intended "to make it very clear that mobilehome tenancies are different from the ordinary tenancy and that landlord-tenant relations involving mobilehomes are to be treated differently" *Palmer v. Agee*, 87 Cal. App. 3d 377, 384 (1978). For instance, a "landlord can only terminate a tenancy for the reasons specified" in the code, which includes nonpayment of rent. *Id.*

Lakeside's collection of the post-petition rent

The court finds that Lakeside's collection of post-petition rents did not violate the automatic stay. Lakeside's claim for post-petition rent is not a claim that arose before the commencement of this case. And, because Debtor had exempted the mobilehome, the property Lakeside collected against was not property of Debtor's bankruptcy estate. Accordingly, the stay did not apply to Lakeside's collection of \$1,848.39 on account of Debtor's post-petition rent obligation.

The court notes, however, that Debtor's exemption may have nonetheless rendered Lakeside's collection improper. But this is an issue unrelated to the automatic stay that neither party raised in their papers. The court therefore declines to reach it.

Lakeside's collection of the pre-petition rent

In contrast, the court finds that Lakeside did willfully violate the automatic stay in collecting pre-petition rents.

The automatic stay applies to Lakeside's unsecured claim for pre-petition rent and prohibits any attempt to collect it. But Lakeside demanded payment and received it. That Lakeside sought relief from stay shows it had notice of Debtor's bankruptcy. The stay was lifted, subject to condition, to permit Lakeside to pursue its unlawful detainer action, but not to collect rent. Further, Lakeside's alleged good faith belief in its entitlement to the rents under Cal. Civ. Code § 798.55(b) is immaterial.

The court also finds that Lakeside was not entitled to the pre-petition rent under Cal. Civ. Code § 798.55. The Mobilehome Residency Law provides mobilehome owners unique protections from eviction. Cal. Civ. Code § 798.55. Not only is the mobilehome park owner limited in the reasons why it can terminate a tenancy, but the park owner also cannot refuse to renew a tenancy when the mobilehome owner sells the mobilehome to a third party. *Id.* at § 798.55(b)(1). If the mobilehome owner elects to do so, the "homeowner shall pay past due rent and utilities upon the sale of a mobilehome pursuant to paragraph (1)." *Id.* at § 798.55(b)(2). But state law must yield to the distribution provisions of the Bankruptcy Code. *In re Allen Care Centers, Inc.*, 163 B.R. 180, 183 (Bankr. D. Or. 1994) *aff'd*, 175 B.R. 397 (D. Or. 1994) *aff'd*, 96 F.3d 1328 (9th Cir. 1996) ("[S]tate law is not permitted to prefer a class of unsecured creditors. This is true although the state's motives for so doing are of the highest order."). If Cal. Civ. Code § 798.55(b)(2) applies as Lakeside suggests, Lakeside would receive a 100% return on its pre-petition unsecured claim.

Lakeside also argues that the court entered an "implied adequate protection" order, thereby entitling it to the post-petition rents. But adequate protection is not implied; it must be requested. § 363(e). *See In re RB Furniture, Inc.*, 141 B.R. 706, 713 (Bankr. C.D. Cal. 1992) ("Section 363(e) allows an entity with an interest in leased property to have the court condition such use as is 'necessary to provide adequate protection of such interest.'"). There is no implied adequate protection order here: Lakeside did not request adequate protection in its stay relief motion, the court's minute order did not provide it, and Lakeside's proposed stay relief order did not mention it.

Conclusion

For the foregoing reasons, the court partially **grants** Debtor's motion and awards her \$10,894.42 in damages. If the parties are willing to submit on this tentative ruling, they may notify the courtroom deputy and opposing counsel, and the court will excuse appearances at the October 20, 2014 hearing. The court will then prepare its own order.

ATTORNEY: TIMOTHY J. SULLIVAN (MARLA GAY FERGUSON)
ATTORNEY: JEAN M. HEINZ (LAKESIDE VIEW ESTATES LLC)

10 - 14-04212-CL Ch 7 WILLIAM DEAN NORDQUIST

MOTION TO EXTEND TIME TO OBJECT TO DISCHARGE FILED BY
CREDITOR PATRICIA RIGGS

Tentative Ruling: The court has reviewed creditor Patricia Riggs's motion to extend time to object to discharge, Debtor's opposition, and the creditor's reply. Good cause appearing, the court **grants** the creditor's motion.

Facts

Debtor filed a voluntary Chapter 7 petition on May 29, 2014 (ECF No. 1) and filed his schedules on June 19, 2014 (ECF No. 10). The creditors' meeting was scheduled for July 3, 2014 (ECF No. 6) and continued several times (ECF Nos. 14, 17, 23). Debtor also repeatedly amended his schedules (ECF Nos. 19, 24, 35). Because the final continued creditors' meeting fell after the deadline to object to Debtor's discharge, the Trustee and Debtor agreed to extend the Trustee's deadline to October 16, 2014 (*see* ECF Nos. 22 & 24). The next day, creditor Patricia Riggs filed this motion (ECF No. 25).

Legal Standard

Federal Rule of Bankruptcy Procedure 4007 requires creditors "to file nondischargeability complaints within sixty days of the creditors' meeting." *Anwar v. Johnson*, 720 F.3d 1183, 1186-87 (9th Cir. 2013). "A creditor may move to extend the deadline for cause . . . but '[t]he motion shall be filed before the time has expired.'" *Id.* at 1187 (citing Fed. R. Bankr. P. 4007(c)).

"Cause" is undefined and left to the court's discretion. *Stonham*, 317 B.R. at 547 (citing *In re Farhid*, 171 B.R. 94, 96 (N.D. Cal. 1994)). "The determination of 'cause' by its very nature is fact driven and thus, must be analyzed on a case by case basis." *Id.* "One court . . . compiled a list of 'cause' factors' which the court should consider." *In re Bomarito*, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011) (citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D.N.Y. 2003)). The *Nowinski* factors are: "(1) whether the moving party had sufficient notice of the deadline and information to file an objection, (2) the complexity of the case, (3) whether the moving party has exercised diligence, and (4) whether the debtor has been uncooperative or acted in bad faith." *Id.* (citing *Nowinski*, 291 B.R. at 305-06).

Discussion

The deadline for objecting to Debtor's discharge was September 2, 2014 (*see* ECF No. 6). The creditor's motion was timely filed on August 29, 2014. The parties disagree over the first, third, and fourth *Nowinski* factors.

(1) Whether the moving party had sufficient notice of the deadline and information to file an objection

Riggs claims she lacked sufficient information and points to the number of continued creditors' hearings and amended schedules. *Cf. In re Paige*, 476 B.R. 867, 872 (Bankr. M.D. Pa. 2012) (finding cause to extend the deadline because the § 341(a) meeting was continued past the filing deadline). Debtor, on the other hand, cites *In re Davis*, 195 B.R. 422 (Bankr. W.D. Mo. 1996) as a case where the court declined to extend the time to object because the creditor had already filed a state court action and so had sufficient information to form the basis of a dischargeability proceeding.

It is not clear what additional information Riggs needs to file a non-dischargeability proceeding. She litigated the underlying debt and reduced it to judgment. But, as in *Paige*, the § 341(a) meeting was extended beyond the original deadline. And *Davis* is distinguishable. There, the court denied the motion due to the creditor's lack of diligence and cited the state court action as a contributing factor. *See Davis*, 195 B.R. at 424. Riggs, however, has been diligent. Accordingly, this factor weighs in her favor.

(2) *The complexity of the case*

Although the case is not factually complex, the court finds that the number of creditors' meetings and amended schedules weighs in Riggs's favor.

(3) *Whether the moving party has exercised diligence.*

If a creditor has not been diligent or there are no special circumstances justifying the lack of diligence, then there is "consensus that 'cause' will not be found" *Paige*, 476 B.R. at 872 (citing cases). But diligence is not necessarily dispositive. *See In re Boltz-Rubinstein*, 454 B.R. 614, 622 (Bankr. E.D. Pa. 2011).

The court finds that Riggs has indeed been diligent. *See In re Vogelgesang*, 2013 WL 773066, at *2 (Bankr. D. Haw. Feb. 27, 2013) (finding cause exists for a short extension of the bar date because the creditors "have been active participants in this bankruptcy case from its conception"). As Debtor admits, Riggs's counsel has attended all of the § 341(a) meetings. Further, Riggs brought this motion the day after the Trustee and Debtor filed their stipulation to extend the Trustee's time to object to discharge. Debtor points to Riggs's failure to request a 2004 exam until after the deadline. That is true. But the court denied the request, in large part, because the § 341 meeting had not yet concluded (ECF No. 32).

(4) *Whether Debtor has been uncooperative or acted in bad faith.*

The court does not find that Debtor has acted in bad faith. But he has amended his schedules several times. Although this suggests cooperation with the Trustee, it also indicates that Debtor did not provide, at the petition date, all the information a creditor would need to file an objection to discharge. Accordingly, this factor weighs in Riggs's favor as well.

Conclusion

For the foregoing reasons, the court **grants** the creditor's motion and extends the deadline for Riggs to object to the dischargeability of her claim against Debtor to December 2, 2014. If Debtor is prepared to submit on this tentative ruling, he may notify the courtroom deputy and opposing counsel, and the court will remove this matter from the October 20, 2014 calendar. Riggs may then upload an order consistent with this tentative ruling.

ATTORNEY: EDWARD MEDINA (WILLIAM DEAN NORDQUIST)
ATTORNEY: BEN EMBRY (WILLIAM DEAN NORDQUIST)
ATTORNEY: STANLEY TOMLINSON (PATRICIA RIGGS)

10:00 AM

11 - 14-05451-CL Ch 7 DAVID ANTHONY & LIUDMILA MARIE MENDOZA

MOTION FOR RELIEF FROM STAY, RS #PD-1 FILED BY HSBC BANK USA NA
AS TRUSTEE FOR DEUTSCHE ALT-A SECURITIES INC, MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2007-BAR1

ATTORNEY: DAVID E. BRITTON (DAVID ANTHONY MENDOZA, LIUDMILA MARIE MENDOZA)
ATTORNEY: ROBERT ZAHRADKA (HSBC BANK USA NA)

10:00 AM

12 - 14-06400-CL Ch 7 NICHOLAS STEVEN & STEPHANIE AMANDA STANICH
MOTION FOR RELIEF FROM STAY, RS #EGS-1 FILED BY GUILD
MORTGAGE COMPANY

ATTORNEY: KEVIN M. MAHAN (NICHOLAS STEVEN STANICH, STEPHANIE
AMANDA STANICH)
ATTORNEY: EDWARD G. SCHLOSS (GUILD MORTGAGE COMPANY)

11:00 AM

1 - 10-00968-CL Ch 7 CHARLES L. ABRAHAMS
MOTION FOR RELIEF FROM STAY, RS #LMK-1 FILED BY DEUTSCHE BANK
NATIONAL TRUST COMPANY, AS INDENTURE TRUSTEE FOR AMERICAN
HOME MORTGAGE INVESTMENT TRUST 2005-3, BY OCWEN LOAN
SERVICING LLC, AS SERVICER, ITS ASSIGNEES AND/OR SUCCESSORS IN
INTEREST (fr. 9/8/14)

ATTORNEY: CHARLES L. ABRAHAMS (CHARLES L. ABRAHAMS)
ATTORNEY: LESLIE KLOTT (DEUTSCHE BANK NATIONAL TRUST COMPANY)

02:00 PM

1 - 12-11710-CL Ch 11 MAM RESTAURANT GROUP, INC.
STATUS CONFERENCE ON CHAPTER 11 PETITION & INFORMAL REVIEW
OF MODIFIED DISCLOSURE STATEMENT & CHAPTER 11 PLAN (fr. 7/28/14)

ATTORNEY: RUBEN F. ARIZMENDI (MAM RESTAURANT GROUP, INC.)
ATTORNEY: DAVID A. ORTIZ (U.S. TRUSTEE)